



Atty. Docket No.: 14098/1013B

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Edberg, Stephen C.
Serial No.: 10/036,288
Filed: October 24, 2001
Entitled: "Detection of First Generation
Environmental Sourced Microbes in an
Environmentally-Derived Sample"

Examiner: Unknown

Group Art Unit: 1623

Conf. No.: 3574

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8a

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Kathleen Williams

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Signature of Person Mailing Paper

Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL LETTER

Enclosed for filing in the above-identified patent application, please find the following documents:

1. Supplemental Information Disclosure Statement;
2. Form PTO-1449;
3. Copy of Cited Reference; and
4. Return Post Card.

The Commissioner for Patents is hereby authorized to charge any additional fees or credit any overpayment in the total fees to Deposit Account No. 16-0085, Reference No. 14098/1013B. A duplicate of this transmittal letter is enclosed for this purpose.

Respectfully submitted,

Date: August 14, 2002

Kathleen Williams

Name: Kathleen Williams

Registration No.: 34,380

Customer No.: 29933

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Tel: 617-239-0100



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**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
UNDER 37 CFR §§ 1.56, 1.97 AND 1.98**

Dear Sir:

In accordance with the duty of disclosure under 37 CFR § 1.56, Applicant submits this Information Disclosure Statement pursuant to 37 CFR §§ 1.97 and 1.98 in the above-identified application for consideration by the Patent Office. A U.S.P.T.O. Form 1449 is enclosed, as well as, for the Examiner's convenience, a copy of the cited document. Pursuant to CFR § 1.97(b)(3), because this Statement is being submitted before the first Office Action on the merits, no fee is required.

Applicant does not intend to represent that the document submitted herein is material prior art to this invention or that the list represents an exhaustive search of documents related to this invention.

The following document is submitted:

1. July 15, 2002 Ruling on appeal of the June 4, 2001 decision of the U.S. District Court for the District of Connecticut granting CPI – The Alternative Supplier, Inc.'s motion for summary judgment.

Serial No.: 10/036,288

In this ruling, the Court of Appeals for the Federal Circuit affirmed the District Court's grant of summary judgment of non-infringement of Stephen Edberg's U.S. patents 5,780,259 and 5,429,933. Based on its interpretation of the specification and prosecution histories of the '259 and '933 patents, the Court of Appeals affirmed the decision of the District Court construing the medium in the subject claims of both patents to be "a specific medium, i.e., one that supports log-phase, reproductive growth of only the target microbes" (page 6, lines 12-13).

Applicant submits that the independent claims of the present invention, which do not recite a "specific" medium, should not be interpreted to be so limited because they are not expressly limited regarding target and non-target growth rates, and because they do not rely on differences in growth rate for their novelty.

Applicant respectfully requests that the document submitted herein be considered and made of record in this application. Upon request, Applicants will provide the Examiner with copies of any pleadings associated with the above Ruling (briefs, hearing transcripts, etc.).

Respectfully submitted,

Date: August 14, 2002



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